THE HON'BLE SRI JUSTICE D.S.R.VARMA

AND

THE HON'BLE SRI JUSTICE P.SWAROOP REDDY

Writ Petition No.21145 of 2005

Dated: 24th January, 2006.

Between:

M/s. Newton Engineering and Chemicals Limited,

Vadodara-390 010, Gujarat,

Rep. by its Director (Finance) Smt. N.Vijayalakshmi

... Petitioner

and

1. Bharat Heavy Electricals Limited,

Rep. by its Chairman & Managing Director,

BHEL House, Siri Fort, New Delhi-110 049 and three others

... Respondents

THE HON'BLE SRI JUSTICE D.S.R.VARMA

AND

THE HON'BLE SRI JUSTICE P.SWAROOP REDDY

Writ Petition No.21145 of 2005

Oral Order: (per the Hon'ble Sri Justice D.S.R.Varma)

Heard both sides.

2. This Writ Petition is directed against the order, dated 09-09-2005,

passed by the Hon'ble the Acting Chief Justice, High Court of Andhra Pradesh, Hyderabad, dismissing Arbitration Application No.34 of 2005, filed under Section 11 (6) of the Arbitration and Conciliation Act, 1996 (for brevity "the new Act"), seeking to declare that mandate of respondent No.2 therein as sole arbitrator had terminated as it failed to act without undue delay in passing award.

3. The petitioner is a Contractor, respondent No.1 – Bharat Heavy Electronics Limited, New Delhi, is the Company, respondent No.2 is the original arbitrator (deceased), respondent No.3 is the Executive Director of the company at Hyderabad and respondent No.4 is the new arbitrator.

4. For the sake of convenience, the petitioner, respondent No.1, respondent No.2, respondent No.3 and respondent No.4 will be referred to as "the Contractor", "the Company", "the original Arbitrator" "the Executive Director of the Company" and "the new Arbitrator" respectively.

5. It is not in dispute that disputes between the Contractor and the Company resulted in the appointment of original Arbitrator. The original Arbitrator, for quite some time, did not pass any award and later on, he died on 08-01-2005. Consequently, the Company appointed one Sri N.Fundareek, as the new Arbitrator.

6. It was the contention of the learned Counsel appearing for the Contractor before the Hon'ble the Acting Chief Justice, High Court of Andhra Pradesh, Hyderabad, in Arbitration Application No.34 of 2005 that in a situation where the original Arbitrator died pending arbitral proceedings, a new Arbitrator ought to have been appointed instead of appointing the present Arbitrator, as a substitute arbitrator.

7. The learned Counsel appearing for the Company and the Executive Director of the Company submits that since the impugned order passed by the Hon'ble the Acting Chief Justice is well reasoned, the same does not require any interference by this Court.

8. From a perusal of the impugned order, it appears that even the Contractor did not know about the death of the original Arbitrator. Further, it is on record that pleadings on behalf of both parties were made, but the arguments were advanced only on behalf of the Contractor in addition to the furnishing of written arguments to the deceased original Arbitrator and pursuant to the death of the original Arbitrator, as already noticed, the subsequent appointment of the new Arbitrator took place at that stage.

9. In view of the said fact, both the learned Counsel appearing for the Contractor and the Company perhaps agreed before the Hon'ble the Acting Chief Justice that the new Arbitrator appointed may take up the matter from the

stage where it was left off by the deceased original Arbitrator. What actually and in fact left off by the deceased original Arbitrator was already indicated i.e., almost just rendering the award since written arguments also were submitted on behalf of the Contractor.

10. In such circumstances, we do not see any justification to interfere with the impugned order.

11. Furthermore, in ***KONKAN RLY. CORPN. LTD. vs. RANI CONSTRUCTION (P) LTD.,*** while dealing with the scope of Section-16 (2) of the old Act, since the apex Court held that the Arbitrator himself had the jurisdiction to decide the question of his own jurisdiction, in our considered view, the impugned order does not require any interference. That apart, since the impugned order was on a consensus submission made by both the learned Counsel appearing for the Contractor and the Company, we do not find any need and reason to continue the Writ Petition any longer.

12. The Writ Petition is devoid of any merit and is liable to be dismissed.

13. In the result, the Writ Petition is dismissed, at the stage of admission. However, there shall be no order as to costs.

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D.S.R.VARMA, J

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P.SWAROOP REDDY, J

24TH JANUARY 2006

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